CLARENCE MARCH

IBLA 70-109 Decided September 23, 1971

Patents of Public Lands: Effect

The effect of the issuance of a patent is to transfer the legal title from the United States and to remove from the jurisdiction of this Department the consideration of all disputed questions of fact, including the determination of a question of rights to land.

Alaska: Native Allotments

A native allotment application is properly rejected because the lands have been patented to the State of Alaska under a state selection, even though the applicant alleges continuous use and occupancy of the lands since a date preceding the filing of and patenting of the state selection.

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| IBLA 70-109 | : | AA-4225 |
| CLARENCE MARCH | : | Native allotment application rejected |
| | : | Affirmed only as to the rejection of the application |

DECISION

By decision of December 11, 1968, the Anchorage, Alaska, land office rejected Clarence March's native allotment application and evidence of occupancy for lots 6 and 7, section 14, T. 6 N., R. 12 W., Seward Meridian, Alaska, as the lands were patented previously to the State of Alaska and are no longer under the jurisdiction of the Bureau of Land Management.

March's application, filed November 12, 1968, alleged use and occupancy of the lands since 1961 in his customary way of life for a fishing site and home. The lands were patented to the State of Alaska on May 14, 1965, pursuant to an amendment to a state selection filed on August 16, 1962, for all vacant, unreserved, and unappropriated lands in the township. 1/

In his appeal to the Director, Bureau of Land Management, on behalf of applicant March, the Area Director, Bureau of Indian Affairs, Juneau, Alaska, acknowledged that the Bureau of Land Management is without jurisdiction to process the application under

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1/ Thus, if March's statements in his application that he has used and occupied the lands from 1961 to the date of filing his application are actually true, and if he is, in fact, a qualified Indian, Aleut, or Eskimo of full or mixed blood as required by section 1 of the Act of May 17, 1906, 34 Stat. 197, as amended, 48 U.S.C. §§ 357, 357b (1958), he would have appropriated the lands prior to the filing of the state selection and would be eligible for an allotment, absent the patenting of the state selection. Cf. Archie Wheeler, 1 IBLA 139, 141 (1970).

the Native Allotment Act since the lands have been patented to the State, but stated that the appeal was taken to preserve the applicant's rights and to request the Department to initiate appropriate steps to have the patent canceled so that title might be conveyed to March, everything else being regular.

In its decision of October 27, 1969, the Office of Appeals and Hearings, Bureau of Land Management, held that the Anchorage land office correctly rejected the appellant's allotment application because the lands involved had been patented to the State of Alaska and were no longer under the jurisdiction of the Bureau. It dismissed the appeal as moot, since the appellant had concurred in the determination made by the land office in rejecting his application.

With respect to the appellant's request that the Department initiate steps to have the State's patent canceled as to the lands involved, the Bureau correctly stated that a mistake in the issuance of a patent may justify a recommendation by the Secretary that the Attorney General of the United States commence suit to cancel the patent, and that suit would generally be recommended where (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by issue of the patent; (3) the duty of the Government to the people so requires; or (4) significant equitable considerations are involved, citing Everett Elvin Tibbets, 61 I.D. 397 (1954). However, in the decision below, after reviewing the evidence in the case record pertaining to the amount of the appellant's native blood, the Office of Appeals and Hearings stated it was not prepared to hold that appellant is precluded from receiving an allotment of land under the Act of May 17, 1906, supra note 1. It held further that the lack of evidence concerning his ethnic qualification was sufficient to persuade that office that recommendation should not be made to the Secretary of the Interior to request the Attorney General to initiate suit to cancel the State's patent.

In appealing to the Secretary of the Interior on behalf of March, the Area Director, Bureau of Indian Affairs, argues that the appellant is qualified and entitled to the allotment, and renews, in substance, the plea made to the Director, Bureau of Land Management,

that the Department should seek to have the State's patent canceled, citing Cramer v. United States, 261 U.S. 219 (1923). 2/

The rulings in the decisions below rejecting the application because the lands have been patented to the state are correct. The effect of the issuance of a patent is to remove from the jurisdiction of this Department the inquiry into and consideration of all disputed questions of fact, including the determination of questions concerning rights to land. See Everett Elvin Tibbets, supra, at 399, and the United States Supreme Court decision and the Departmental decisions cited therein; Kelso B. Morris, A-28070 (October 26, 1959); Doris L. Ervin et al., A-29393 (July 8, 1963). This is sufficient to dispose of the proceeding at hand.

We decline to rule on appellant's request that this Board recommend institution of suit for cancellation of the State's patent. Rather, we order the case record returned to the Bureau of Land Management and suggest that the Bureau, the appellant and the Bureau of Indian Affairs, if they so desire, take the matter up with the Office of the Solicitor, the Department's office in charge of litigation matters.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed

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2/ Cramer held that the duty and authority of the United States to act as guardian for Indians extends to the protection of individual Indians, even though they may have become citizens, and authorizes the United States to bring a suit to cancel a patent on behalf of individual Indians, who were occupants of the land at the time it was granted to a railroad. The case also holds that the Act of March 3, 1891, 43 U.S.C. § 1166 (1964), limiting the time to six years within which suits may be brought by the United States to annul land patents, does not bar the right of the United States to remove a patent as a cloud upon the possessory rights of Indian occupants. The six-year period since the issuance of the patent to the State in the instant case expired on May 14, 1971.

only to the extent that it rejected the appellant's native allotment application because the lands had been patented to the State of Alaska and are no longer under the jurisdiction of this Department.

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Anne Poindexter Lewis, Member

We concur:

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Martin Ritvo, Member

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Francis Mayhue, Member